93-725

Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

MORVANT J. CHERAMIE ET AL
Petitioners
V
EXXON CORPORATION, SHELL OIL COMPANY, MOBIL EXPLORATION & PRODUCING, NORTH AMERICA (MEPNA)
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I

THE COURT OF APPEALS' HOLDING AND FOOTNOTE ON PAGE 5a (note 11) AFFIRMING THE GRANTING OF SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT LESSEES WITH REGARD TO THE PETITIONERS' COMPLAINT OF CONFUSION AND AMBIGUITY, THE OBVIOUS ALTERATION OF THEIR LEASE, WITHOUT THEIR KNOWLEDGE NOR CONSENT, ADMITS TO THE IDENTICAL AMBIGUITY COMPLAINED OF, AND THEN THE COURT REVERSES ITS FIELD BY CITING LOUISIANA CIVIL CODE ARTICLE 1983(footnote 12)"A mineral lease is a contract which has the effect of law between the parties." PETITIONERS RESPECTFULLY POINT OUT THAT THIS PART OF THE COURT OF APPEALS' HOLDING IS AMBIGUOUS FOR WHEN THE COURT FINDS THERE IS A MINERAL LEASE AND IT IS THE CONTRACT BETWEEN THE PARTIES BUT CERTAIN LANGUAGE HAS MORE THAN ONE INTERPRETATION IS NOT THIS AN ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL ON THIS ISSUE?

II.

WHEN THE LESSORS OF THE 1954 OGM, AND THE TWO COMPROMISE AGREEMENTS OF 1957, WHICH WERE DRAWN BY THE LESSEES OF THE OGM, SIGN THESE CONTRACTS BY USING THEIR MARKS (X'S), SINCE THEY COULD NOT READ NOR WRITE FRENCH OR ENGLISH, AND THE EFFECT OF THESE CONTRACTS WAS TO MAKE A DRASTIC AND MATERIAL CHANGE IN THE 1\8th ROYALTY PAYMENT PROMISED PETITIONERS HEREIN IN 1954, AND THE 1957 COMPROMISE AGREEMENTS WERE HOPELESSLY CONFUSING (even defendants Exxon\Shell admit to being confused in a pleading filed into this record) DOES THIS NOT PUT INTO QUESTION THE GOOD FAITH AND INTENT OF ALL THESE DEFENDANTS AND THUS RAISE A CRITICAL ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL?

III.

IF THERE APPEARS TO BE A SYSTEMATIC PATTERN OF BAD FAITH AND\OR INAPPROPRIATE BEHAVIOR BY ALL DEFANDANTS COURSING THROUGH THE PREPARATION OF THE ABOVE DOCUMENTS FOR APPROVAL BY THE ILLITERATE LESSEES AND INCLUDING THE April 26, 1960, ADMENDMENT PREPARED BY EXXON\SHELL, WHICH TOOK MORE LAND FROM THE LESSEES FOR THE USE OF EXXON\SHELL, WITHOUT MENTIONING IN SAID AMENDMENT THE ALTERED 1954 OGM, DOES NOT THIS APPARENT PATTERN PUT INTO QUESTION THE GOOD FAITH AND INTENT OF ALL DEFENDANTS AND THUS RAISE A CRITICAL ISSUE OF GENUINE MATERIAL FACT WORTHY OF A FULL TRIAL WHEN THESE DEFENDANTS SEEK TO WRAP THEMSELVES IN A LOUISIANA RECORDATION STATUTE AS INNOCENT THIRD-PARTIES AND

EFFECT A UNILATERAL BREACH OF THE 1954 OGM, WHEN THEIR ACTIVITIES SUGGEST OTHERWISE?

IV

WHEN PETITIONERS HEREIN ALLEGE A CONSPIRACY BETWEEN THREE GIANT CORPORATIONS IN THE OIL AND GAS INDUSTRY TO COMMIT THE FRAUD POINTED OUT HEREIN AND GIVES NAMES. DATES, PLACES, ACTIVITIES AND SUPPORTING DOCUMENTS, DOES THIS NOT SATISFY FRCP RULE 9 (b)?

CONCLUSION.....9

LIST OF PARTIES

MORVANT J. CHERAMIE, SUSAN JEANDRON, ALCIDA SEIBERT, HENRY SEIBERT, JR., NOLAN J. SEIBERT, ROLAND D. SAPIA, TERRY LEE, SR., GILBERT J. LEE, MARY ANN LEE PARTA, HOWARD ANDREW LEE, CHARLES J. ALLO, DANIEL ALLO, RONNIE ALLO, BERNICE COLLINS GRIFFEN, ENIS J. CHERAMIE, SR., EVA RITA MAY CHERAMIE GAUTREAUX, MERLIN FAYARD, LEE ROY RIVET, ARAMIS L. CHERAMIE, BEVERLY JENADRON, TANYA [illegible]NER, ROSITTA CHERAMIE LEPINE, ERNEST J. CHERAMIE, JR., RUBY CHERAMIE SPERBER, MAYOLA CHERAMIE DIGIOVANNI, JOYCE CHERAMIE, BETTY ANN CHERAMIE RONQUILLE, DARLENE CHERAMIE RICHE BIANCINI, LEE JOSEPH CHERAMIE, JEFFERY J. CHERAMIE, LEE ALLEN CHERAMIE, DOROTHY CHERAMIE RUTLEY, LESTER J. CHERAMIE, JR., AUJEST J. CHERAMIE, RUNICE CHERAMIE FALGHOU, SYLVIA FALGHOU, RONNIE FALGHOU, ROBIA FALGHOU, ALLEN FALGHOU, ELLA CHERAMIE GUIDRY, GUSTAVIA CHERAMIE PLAISANCE, JACQUIN CHERAMIE, SERITA CHERAMIE TERREBONNE CARMADELLE, VICKIE CHERAMIE , JESSICA CHERAMIE, JUDY COLLINS GAUDIN

LIST OF PARTIES CONTINUED:

MILTON JOSEPH COLLINS, VICTORIA COLLINS FAUCHEAUX, JOHNNY JOSEPH GAMBINO, PATRICIA D. BOURQUE, RICHARD M. JENADRON JEFFERY GAMBINO, ELIZABETH G. PLAISANCE ANGELA MARKS, BARBARA C. DUFOR

EXXON CORPORATION - DEFENDANT
SHELL OIL COMPANY - DEFENDANT
MOBIL EXPLORATION & PRODUCING NORTH AMERICA (MEPNA) - DEFENDANT
TAYLOR ENERGY COMPANY - THIRD PARTY DEFENDANT
LISKOW & LEWIS - COUNSEL FOR MEPNA
PATRICK GRAY - COUNSEL FOR MEPNA
ROBERT WOOD - COUNSEL FOR EXXON CORPORATION
MARK B. MEYERS - COUNSEL FOR SHELL OIL COMPANY
LINTON MORGAN - COUNSEL FOR TAYLOR ENERGY COMPANY

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JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. Sec. 1332 (a) (1), the petitioners brought this suit in the Eastern District of Louisiana on October 19, 1990. On September 28, 1992, the District Court granted summary judgment to all defendants pursuant to Rule 56(c) and denied plaintiff's motion for summary judgment; this District Court granted defendants' motion to dismiss pursuant to Rule 9(b).

On the petitioners' appeal, the Fifth Circuit on June 17, 1993, affirmed the judgment of the District Court, and on July 13, 1993, denied petitioners' petition for rehearing (Appendix p. 10A).

The jurisdiction of this Court to review the judgement of the Fifth Circuit is involked under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

Federal Rule of Civil Procedure 56(a). A party seeking to recover upon a claim, counterclaim or to obtain a declaratory judgment may, at any time after the expiration of 20 days for the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof .....5 thru 10

(b) *For Defending Party.* A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgement is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor at to all or any part thereof.

Federal Rule of Civil Procedure 9(b). Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of person may be averred generally .. ..-6,8-

LSA-R.S. 9:2721.1. Recordation of Extract of Lease A. (1) With Respect to leases of immovable property, it shall not be necessary to file the entire lease, In such a case, an extract of the lease may be recorded in the office of the parish recorder of the parish where th immovable property is situated .....-7,9-

(2) For purposes of recording an exrtact of the lease, such an extract shall include:

(a) The names and signatures of the lessor and lessee;

(b) The day of execution of the lease;

(c) A brief description of the leased property;

(d) The term of the lease; and

(e) A reference to the existence of any renewal or pur chase option contained in the lease.

R.X. 9:2722. Persons Protected. Third persons or third parties so protected by and entitled to rely upon the registry laws of Louisiana now in force and effect and as set forth in this Chapter are hereby redefined to be and to include any third person or third party dealing with any such immovable or immovable property or acquiring a real or personal right therein as purchaser, mortgagee, grantee or vendee of servitude or royalty rights, or as lessee in any oil ,gas or mineral lease and all other third persons or third parties acquiring any real or personalty right, privilege or permit relating to or affecting immovable property ..... -6,9-

LSA-Civil Code article 2670 . Essential Elements of Lease To obtain contract of lease, as to that of sale, three things are absolutely necessary, to wit: the thing, the price, and the consent .....-9-

LSA-Civil Code article 1953. Fraud May Result From Misrepresentation if From Silence. Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud my also result from silence or inaction .....-9-

LSA-Civil Code article 1983 Law For the Parties; Performance in Good Faith Contracts have the effect of law for the parties and may be dissolved only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith ..... -9-

LSA-Civil Code article 2056 Standard-Form Contracts In case of doubt that cannot be otherwise resolved, a provision in a contraxt must be interpreted against the party who furnished the text .....-9-

LSA-R.S. 31:122. Lessee's Obligation to Act as Reasonably Prudent Operator. A mineral lessee is not under a juduciary obligation to his lessor, but he is bound to perform the contract in good faith and, to develop and operate the property leased as a reasonably prudent operator for the mutual benefit to himself and his lessor. Parties may stipulate what shall constitute reasonably prudent conduct on the part of the lessee. .....-9-

LSA-Civil Code article 1770. Condition that Depends on the Whim or the Will of the Obligor A suspensive condition that depends soley on the whim of the obligor makes the obligation null.

A resolutory condition that depends soley on the will of the obligor must be fulfulled in good faith.

LSA-R.S. 31:212.23. Effects of Payment or Nonpayment with or without Stating Reasonable Cause Therefore

A. If the obligor pays the royalties or production payments due plus the legal interest applicable from the date payment was due, the owner shall have no furhter claim with respect to those payments.
B. If the obligor fails to pay within the thirty days from notice but states a reasonable cause for nonpayment, then damages shall be limited to legal interest on the amountrs due from the date due.
C. If the obligor fails to pay and fails to state a reasonable cause for failure to pay in response to the notice, the court may award as damages double the amount due, legal interest on that sum from the date due, and a reasonable attorney's fee regardless of the cause for the original failure to pay .....- 9-

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Petitioner,

VS.

EXXON CORPORATION, SHELL OIL COMPANY, MOBIL EXPLORATION & PRODUCING, NORTH AMERICA (MEPNA)

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for teh Fifth District

PETITION FOR WRIT OF CERTIORARI

The petitioners herein, respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in the above proceedings on June 17, 1993, and the denial of petitioner's petition for a rehearing on July 13, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reprinted in the Appendix hereto, p. 1a.

The memorandum decision of the United States District Court for the Eastern District of Louisiana, is reprinted in the Appendix hereto, p.9a.

STATEMENTS OF THE CASE

Invoking federal jurisdiction under 28 U.S.C. Sec. 1332 (a)(1), the petitioners brought this suit in the Eastern District of Louisiana on October 19, 1990.

Petitioners' entire case concerns contract law. Hornbook, black letter contract law as applied to Louisiana's mineral leases between landowner/lessors and giant oil company lessees. The landowner/lessors to the 1954 Oil, Gas and Mineral Lease (OGM hereinafter) could neither read or write Frech nor English, which was apparent to all defendants very early on prior to the confection of the 1954 OGM. The original landowner/lessors in 1954 were the heirs of one Haize Cheramie. For this petition we will address them as *Haize et al.* The petitioners herein are the heirs of the original eleven *Haize et al.* One of the petitioners herein is the last living landowner/lessor of the 1954 OGM, ie., Morvant J. Cheramie, the lead plaintiff/petitioner.

The 1954 OGM was signed by Haize et al by using "X's" for their signatures. The 1957 Compromise Agreements were signed by haize et al with the same "X's" as was the 1960 Amendment which added more property to the 1954 OGM. These documents were duly recorded in conveyance office in Lafourche Parish, Louisiana. There has been litigation of one kind or antoher since 1934, over

this highly productive oil and gas producing real estate. Originally, the Cheramies owned over 900 acres of theproperty in dispute until Harvey Peltier and William Scully entered the picture and obtained the Cheramies' land through a partition sale in 1934. But Haize et al refused to participate in the sale. In 1951, those Cheramies who participated in the sheriff's sale (partition of 1934) filed an action of nullity against Peltier, Scully, Superior Oil (MEPNA now) and Clovelly Corp., a Scully company. Again, Haize et al did not participate in the 1951 suit. Judgment was rendered against those Cheramies. Haize et al were brought into the 1951 action first, as involuntary defendants and again as participating plaintiffs by a lawyer named Girard Schreiber.

None of the Haize et al group were aware of this "participation" nor did they know who Gerard Schreiber was or why he was even involved. Schreiber was active in both 1957 Compromise Agreements along with representatives of Peltier, Scully, and Superior Oil Co. At the meeting in a kitchen of one of the Haize et al group he advised these Cheramies that he was working with G. Wray Gill, a lawyer he was associated with in an office in New Orleans. Gill had been hired by Haize et al to determine what percentage of the property described in the 1954 OGM they owned as opposed to the rest of the Cheramies, a very large family in Louisiana. He determined that the percentage was 1/21st. This 1/21st appears in both Compromise Agreements and were offered to Haize et al by Schrieber. But Humble Oil & Refining Company (now Exxon/Shell-Shell has advised the court that Exxon and it are one defendant herein) was not a party to Compromise Agreement "A". Peltier and Scully and Superior (now MEPNA) were parties to Compromise

Agreement "B". Each Agreement reduced the promised 1/8th royalty to 148/4935 for *each* lessor/landowner (just as in the 1954 OGM). And *each* lessor was paid 148/4935 as their royalty share. Affidavits filed into this record swear that none of the lessors were allowed to hold these Agreements nor were they explained as to why their promised 1/8th was being reduced. Haize et al have endeavored since April, 1960, to find out why these royalties were so late (12 years after the 1954 OGM) and why they were recieving .03 cent royalty checks. Finally, Morvant J. Cheramie, and other petitioners hired undersigned to investigate and file suit. Suit was filed on October 19, 1990.

The Fifth Circuit Court of Appeals affirmed the district court's granting of summary judgment to all defendants and denying petitioner's motion for summary judgment on September 17, 1992.

REASONS FOR GRANTING THE WRIT

The district court set out its reasons why it denied petitioner's motion for summary judgment and granted all defendants motions for summary judgment. The Fifth Circuit Court of Appeal affirmed the district court and added reasons of its own. Appendix p. 9a and p. 8a.

And the above decisions certainly appear to demonstrate why these defendants did not or should not have contracted with Haize et al. But nevertheless these defendants contracted not once but three more times, ie., the 1954 OGM, two 1957 Compromise Agreements and the 1960 amendment adding more property to the 1954 OGM. What was the motive or motives of these defendants? If this Court will examine the affidavits of Richard O. Beightol, petitioner's expert, Appendix p. 21a and the

affidavits of some of the petitioners, Appendix p. 19a it illustrates the amount of money involved and effectively demonstrates the motives of all defendants.

Petitioners' affidavits of illiteracy Appendix p.22a created issues of genuine material fact as does Mr. Beightol's affidavits. But it appears that even without the obvious illiteracy (making "X's" for the signatures on all three documents over a six year span) Haize et al were at a huge disadvantage. Exxon/Shell, in Shell's sworn response to petitioner's interrogatories admitted to ambiguity of the 1957 contracts "Furthermore, the Compromise Agreements themselves are confusing." This admission created another isssue of genuine material fact worthy of a full trial. p. 15a.

II

Petitioners adopt all of the above for No. II, and, in addition re-emphasize that the parties herein entered into bilateral contracts and apparent good faith by Haize et al since they were too ignorant to be a threat to these defendants.

III

Gerard Schreiber, in a letter to petitioner's counsel, dated August 16, 1989, denied being a part of any legal representation in behalf of the Cheramies at any time. Appendix p. 26a. However, Exxon, in response to petitioner's request for production provided them with a Division of Interest Pay Sheet, with a "Current Date of 89/06/29", and Gerard H. Schreiber, recieving money of some sort, together with some of the petitioners herein. This contradiction is jarring in its disclosure. Surely, this

presents an issue of genuine material fact worthy of a full trial since Schreiber's name appears on all the documents that contributed to the damages claimed by petitioners and found in their affidavits. Appendix p. 27a. These defendants have spun a web of deceit and misrepresentation throughout by their action and inaction and silence when appropriate for their purposes. Especially when Exxon/Shell refused to participate in the very Compromise Agreement (Tract "A") which drastically reduced the contracted royalty share in the 1954 OGM. And then years later try to justify this unilateral breach by wrapping themselves in a Louisiana recordation/registry statute LSA-R.S. 9:2721 and 22. p. IX. Louisiana contract law insists on good faith in all agreements including mineral leases. p x.

IV

Petitioners have alleged a conspiracy of fraud and misrepresentation based on the documents, affidavits, listed in the appendix. They have given names, dates, places and things, filed by defendants in the conveyance office on Lafourche Parish, Louisiana. They have shown a glaring contradiction with regard to Gerard Schreiber. Perhaps he has a reason or grounds for his activities. But does not all of the above satisfy FRCP Rule 9(b)? Has not the alleged fraud been stated with particularity? Especially when giant, wealthy, world-wide oil and gas corporations are involved-with exclusive control over any information other than that furnished by petitioners? Does not this create an issue of genuine material fact worthy of a full trial? *Re Craftmatic Securities Litigation v Kraftsow*, 890 F2d 628. The petitioner's motion for summary judgment included some 30 documents and several affidavits which

put in issue all of the defendants' arguments in support of their motion for summary judgment. This Court has said, "Where evidentiary matter in support of a motion for summary judgment does not establish an absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is submitted," *Adickes v S.H. Kress & Co.*, 398 U.S. 144, 90 S.Crt. 1598. And, focusing on whether or not the moving party can merely submit documents and argument for a summary judgment, this Court held, "In many actions, there will be issues as to knowledge, intent, and motive which will require full trial with opportunity to observe demeanor of witnesses, and to conduct cross-examination in open court; in such cases summary judgment cannot be granted even after discovery has been had." *Schoenbaum v Firstbrook*, (1968 CA 2 NY) 395 U.S. 906, 89 S. Crt. 1747. The Fifth Circuit Court of Appeals recently stated that, "Trial judge is not forbidden from drawing inferences from evidence submitted on summary judgment when same judge will act as trier of fact, unless those inferences involve issues of credibility or disputed material facts." *Re PlacidOil*, (1991, CA 5 Tex) 932 F.2d 394. In another recent Fifth Circuit case it said, "In resolving summary judgment motion, a court may not undertake to evaluated credibility of witnesses, weigh evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury resolving all inferences in favor of non-moving party could arrive at verdict in the party's favor, the court must deny the motion." *International Shortstop, Inc. v Rally's, Inc.*, (CA 5 TEx) 939 F.2d 1257 Certainly Gerard H. Schreiber's credibility has been brought into question. For, without his active participation as set out hereinabove the defendants might not have been able to shape the events which conspired to cause the large money dam-

ages alleged, ie., the altered 1954 OGM, the two Compromise Agreements, and the 1960 amendment to the OGM.

Exxon/Shell's use of LSA-R.S. 9:2721-22, to cover their drastic reduction from the promised 1/8th to that of 148/4935, found in the Compromise Agreemens of 1957, which is a unilateral breach of the 1954 OGM, without the knowledge and consent of the to her party, is not available to one in bad faith. A Louisiana court explained it this way, " When the legislature in redefining who a third person or third party was by use of the language dealing with any such immovable....or mineral lease.....makes it clearly apparent what it intended....Therefore, it seems quite obvious from a casual reading of this statute that the legislature never intended to include as a .....third person or third party a bad faith tresspasser, that is, a tresspasser who does not act under any color of authority or permission granted by the record owner." *Sick v Bendix-United Geophysical Corporation et al.* 341 So.2d 1308, rehearing denied.

With regard to the fraud allegations which the courts below found insufficient, it is submitted that by filing all the numerous documents, affidavits and exhibits, the petitioners have more than complied with FRCP 9(b). A Fifth Circuit case affirmed a lower court's holding in connection with plaintiff's fraud allegations stating that under the facts the corporate defendant was liable in solido and that the district court properly applied the doctrine of contra non valentem agere nulla currit praescripto to avoid a one year prescriptive period, and that legal interest would run from end of the calendar years within which each payment was made rather than date from judicial demand. This court applied the Louisiana "clear and convincing" standard of persuasion in cases of

fraud, saying that our courts do not require conclusive proof of fraud, since it sometimes can be inferred from proof of highly suspicious conditions or events." *American Cyanamid v Company v Electrical Industires, Inc.*, 630 F.2d 1123.

CONCLUSION

Yes, the district court and the court of appeals below reminded us that the defendants should not have contracted with the petitioners when these courts adopted the defendants' motions for summary judgment and granted same. But these defendants did in fact, and in law contract with the petitioners. Therefore contract law applies-Louisiana contract law. This state insists on good faith in all contracts and mineral leases. *LSA-Civil Code article 1983, LSA-R.S. 31:1222* p. x Only a trial will determine *why*-contract?

Louisiana provides that a dispute over a standard form contract (OGM) is resolved against the party who furnished the text. *LSA-Civil Code article 2056.* p. x.

Petitioners have asked that the penalties found in LSA-*R.S. 31:212.23* (C) be used to compensate them for their damages. P.x.

These defendants have continuously ratified and confirmed the 1954 OGM, the two Compromise Agreements and the 1960 Amendment to the OGM since 1966, as some payments are sitll being made to some of the petitioners. Appendix p. 27a.

This is a Louisiana contract case between several incompetent landowner/lessors and big, wealthy worldwide oil and gas companies and Louisiana contract law is appropriate and necessary to a proper resolution of this matter.

Through Compromise Agreement "B" defendant

MEPNA leased the property described therein from Haize et al. Louisiana law States that three things are absolutely necessary to perfect a lease, one thing is consent. P. ix. Can one confect a contract with an incompetent or illiterate lessor? Can there be legal consent with an illiterate person?

Louisiana law defines fraud as misrepresentations, silence, or inaction by a party. P.x

CONCLUSION

For all the reasons stated, law and Appendix herein, this Writ of Certiorari should be granted and this case be remanded to the District Court for a trial on the merits.

Respectfully submitted,

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